

THE LAW OFFICES OF

STEVEN L. KESSLER

January 30, 2008

BY ECF

The Honorable Kevin Nathaniel Fox
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, N.Y. 10007

**Re: *Kapiti v. Kelly et al.*
07 CV 3782 (RMB)**

Dear Magistrate Judge Fox:

This office represents plaintiff Mark Kapiti. As the Court is aware, the parties have been briefing defendants' motion to unseal plaintiff's criminal records.

Yesterday, I received by fax defendants' reply papers. Plaintiff objects to the content of these papers, which include not only extensive new factual and legal arguments, but also a new legal basis for the entire motion. The grounds for plaintiff's motion, at first purportedly made pursuant to CPL§ 160.50, now consist of four *docket entries* and an unreported two page decision. No context is provided for assessing the relevance of this "authority" and, even if a context were provided, plaintiff would be unable to respond as the material is being improperly introduced for the first time on reply.

Accordingly, plaintiff respectfully requests that this Court decline to consider defendants' reply in ruling on defendants' motion. Should the Court accept defendants' submission, plaintiff respectfully requests permission to respond formally thereto.

Respectfully submitted,

Steven L. Kessler

Steven L. Kessler (SK-0426)

SLK:rmaf

cc: Counsel for defendants (*by ECF*)